SINGLE BENCH

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 1965 OF 2005

PETITIONERS : 1. Siya Bai W/o Lurku @ Laxman Satnami, aged about 26 years;

2. Ku. Anisha D/o Lurku @ Laxman Satnami, aged about 2 years;

3. Hulasram S/o Lurku @ Laxman Satnami, aged about 3 months,

The petitioner no.2 and 3 are Minors, Through natural guardian Mother Siya Bai;
All R/o Village Sapiya, Police Station Dabhra, Tahsil Sakti, District Janjgir-Champa (C.G.).

P.R. No. 1938/05
Presented by Shri A. P. Dubey
dated 29.04.05

VERSUS

RESPONDENT : Lurku @ Laxman Satnami, S/o Mohan Satnami, aged about 28 years, R/o Raigarh Dipapara, Orissa Road Tahsil and District Raigarh (C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Writ Petition No. 1965 of 2005

Petitioners Siya Bai and others

Versus

Respondent Lurku alias Laxman Satnami

Post for order on 31st July, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1965 of 2005

Petitioners Siya Bai and others

Versus

Respondent Lurku alias Laxman Satnami

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri L. P. Dubey, Advocate for the petitioners.

Shri S. K. Tiwari, Advocate for the respondent.

O R D E R

(31st July, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The present writ petition under Article 226/227 of the Constitution of India impugns the order dated 17.2.2005 passed by the Additional Sessions Judge, Sakti, District- Bilaspur in Criminal Revision No. 500/2004, whereby the petitioners No. 2 and 3 i.e. minor daughter and minor son of the petitioner No.1 and the respondent were granted allowances for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') at the rate of Rs. 500/-, each, per month, confirming the order dated 26.11.2004 passed by the Additional Chief Judicial Magistrate, Sakti in Misc. Criminal Case No. 223/2002.

2. Learned counsel for the petitioners submits that it is the responsibility of the husband/respondent to maintain his wife and as such the wife/petitioner No.1 is also entitled to get maintenance, and the amount of maintenance granted to the petitioners No. 2 and 3 be increased. He further submitted that the petitioner No.1 was deserted by the husband/respondent

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No.1 as the petitioner No.1 and her family could not meet the demand of Rs. 10,000/- from her father by the husband.

3. On the other hand, learned counsel appearing for the respondent submitted that the income of the petitioner is about Rs.1800/- per month, out of which Rs. 1000/- has already been granted to the minor children. The petitioner No.1/wife is not entitled to any maintenance under Section 125(4) of the Cr.P.C. which provides that no wife shall be entitled to receive an allowance for the maintenance, if without any sufficient reason she refuses to live with her husband. The respondent/husband is willing to live with his wife and keep her with him, and there is no reason why she has chosen to live separately, and as such, the respondent/husband is not liable to pay any maintenance allowance to the petitioner No.1/wife. The maintenance allowance paid to the children are even otherwise excessive, keeping in view the monthly income of the respondent/husband.

4. After having heard learned counsel for the parties and perusing the judgment of the court-below, it is found by the trial Court that the allegation of demand of dowry, beating and desertion is not proved and the petitioner No.1/wife has not given any sufficient reason as to why she was living separately. The revisional Court has examined the facts of the case and confirmed the finding and the order dated 26.11.2004 passed by the Additional Chief Judicial Magistrate, by its order dated 17.2.2005.

5. Keeping in view the earning of the respondent/husband i.e. about 1800/- per month, out of which Rs. 1000/- has already been granted to the minor children, who are living with the wife, it may be conveniently presumed that the full amount may not be used

for maintenance of 3 years and 3 months old children and some of the money must have been used by the petitioner No.1/wife also. However, in the facts and circumstances of the case the respondent is directed to pay a further sum of Rs. 300/- p.m. to the petitioner No.1/wife, from the date of passing of this order, in addition to the amount of Rs. 500/- payable to the petitioner No.2 and petitioner No.3, each, as directed by the Courts below.

6. For the reasons stated above, this petition is partly allowed to the above extend. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur